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10/775,013

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04/27/2009

EXAMINER

FAROUL, FARAH

ART UNIT

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2416

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/775,013	Applicant(s) SHANLEY ET AL.	
	Examiner FARAH FAROUL	Art Unit 2416	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-52 and 56-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-52 and 56-58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 May 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The following Office Action is based on the amendment filed on January 16, 2009, having claims 1-52 and 56-58 (claims 56-58 having been added).

Response to Arguments

2. Applicant's arguments with respect to claims 1-52 and 56-58 have been considered but are moot in view of the new ground(s) of rejection. Applicant is reminded to address all references when the rejection is based on a combination of references. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Applicant is also reminded to cite the part(s) of the original disclosure that supports any amendment(s) made after the first action on the merits.

Claim Objections

3. Claims 56-58 are objected to because of the following informalities:

The phrase "such that" recited in claims 56-58 should be deleted to render the claims positive.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 56-58 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 56-58 recites the limitation "PDUs from **zero or more particular streams**". The bolded words are not supported by the original specification. The new matter is to be deleted from the claims.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 56-58 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 56 recites the limitation "from **zero or more particular streams**" in line 4. The limitation renders the claim vague and indefinite. PDUs should be received from at least one stream. It is suggested that the limitation be amended to recite "one or more particular streams".

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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Claims 1-3, 6-8, 16, 27-29, 42, and 56-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saint Etienne et al. (US 7,242,683 B2) in view of Kauschke et al. (US 2005/0013250 A1).

For claim 1, Saint Etienne discloses receiving PDUs (column 1, lines 25-28 wherein the "useful load" is the PDUs) from multiple streams (col. 2, line 21-35, where multiple virtual links are multiplexed over a single full-duplex Ethernet link) at a first MAC client (Fig 2, element 13); encapsulating each PDU in a MAC frame which includes an identification of the stream to which the PDU belongs (col. 1, lines 25- 28, where a frame is created by encapsulating the useful load, i.e. the PDU, in an Ethernet frame, see also col. 3, lines 49-53)

Transmitting the MAC frames over an Ethernet link to a second MAC client (Fig 2, element 14) receiving the MAC frames at the second MAC client (col. 4, line 64-col. 5, line 11, where each client may transmit frames to a plurality of virtual links, such that the MAC client must receive information from multiple streams)

Decapsulating the PDUs in the MAC frames received at the second MAC client (col. 3, lines 44-52, where "putting the data together again" requires the destination equipment to decapsulate each PDU, see also col. 1, lines 25-28); and forwarding each PDU to a port buffer associated with the stream identified in the MAC frame from which each PDU was decapsulated (col. 3, lines 44- 52, where the data is made "available to the receiving application," i.e. the PDUs are forwarded to a port associated with the stream identified in the MAC frame)

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For claim 1, Saint Etienne discloses the entire claimed invention except for monitoring each buffer for fullness and transmitting a Pause control frame from the second MAC client to the first MAC client, the Pause control frame indicating the fullness condition of each buffer

Kauschke, from the same or similar field of endeavor, teaches monitoring each buffer for fullness and transmitting a Pause control frame from the second MAC client to the first MAC client, the Pause control frame indicating the fullness condition of each buffer (paragraph 50, lines 1-8).

Thus, it would have been obvious to one of ordinary skill in the art to combine the congestion control of Kauschke with the communication network of Saint Etienne at the time of the invention. The congestion control of Kauschke is implemented into the communication network of Saint Etienne by sending a Pause control to restrict the traffic flow into the buffers. The motivation to combine the congestion control of Kauschke with the communication of Saint Etienne is that it increases system throughput.

For claim 16, Saint Etienne discloses receiving MAC frames from a MAC client, each frame containing a PDU (column 1, lines 25-28 wherein the "useful load" is the PDUs) and an indication of the stream to which the PDU belongs (col. 2, lines 21-35, where the source subscriber equipment creates frames, with each frame containing a field that identifies the virtual link to which the frame belongs);

Decapsulating the PDUs (col. 3, lines 44-52, where "putting the data together again" requires the destination equipment to decapsulate each PDU, see also col. 1, lines 25-28); and storing each PDU in a buffer associated with the stream indicated in

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the MAC frame (col. 3, lines 44- 52, where the data is made "available to the receiving application," i.e. the PDUs are forwarded to a port associated with the stream identified in the MAC frame)

For claim 16, Saint Etienne discloses the entire claimed invention except for monitoring the fullness of each buffer and transmitting a Pause control frame to the MAC client, the Pause control frame indicating the fullness condition of each buffer

Kauschke, from the same or similar field of endeavor, teaches monitoring each buffer for fullness and transmitting a Pause control frame from the second MAC client to the first MAC client, the Pause control frame indicating the fullness condition of each buffer (paragraph 50, lines 1-8).

Thus, it would have been obvious to one of ordinary skill in the art to combine the congestion control of Kauschke with the communication network of Saint Etienne at the time of the invention. The congestion control of Kauschke is implemented into the communication network of Saint Etienne by sending a Pause control to restrict the traffic flow into the buffers. The motivation to combine the congestion control of Kauschke with the communication of Saint Etienne is that it increases system throughput.

For claim 27, Saint Etienne discloses a first MAC client (Fig 2, element 13); a second MAC client (Fig 2, element 14) coupled to the first MAC client by the Ethernet link (col. 2, lines 21-35, where the system include at least one destination subscriber equipment, i.e. a second MAC client, connected to the source MAC client over an Ethernet link);

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The first MAC client having means for receiving PDUs from multiple streams (column 1, lines 25-28 wherein the "useful load" is the PDUs) from multiple streams (col. 2, line 21-35, where multiple virtual links are multiplexed over a single full-duplex Ethernet link); means for encapsulating each PDU in a MAC frame which includes an identification of the stream to which the PDU belongs (col. 2, lines 21-35, where the source subscriber equipment creates frames, with each frame containing a field that identifies the virtual link to which the frame belongs, and col. 1, lines 25-28, where a frame is created by encapsulating the useful load, i.e. the PDU, in an Ethernet frame); means for transmitting the MAC frames over the Ethernet link to the second MAC client (col. 4, line 64-col. 5, line 11, where each client may transmit frames to a plurality of virtual links, such that the MAC client must receive information from multiple streams);

The second MAC client having means for receiving the MAC frames transmitted by the first MAC client (col. 4, line 64-col. 5, line 11, where each client may transmit frames to a plurality of virtual links, such that the MAC client must receive information from multiple streams); means for decapsulating each PDU (col. 3, lines 44-52, where "putting the data together again" requires the destination equipment to decapsulate each PDU, see also col. 1, lines 25-28); means for forwarding each PDU to a port buffer associated with the stream identified in the MAC frame from which each PDU was decapsulated (col. 3, lines 44- 52, where the data is made "available to the receiving application," i.e. the PDUs are forwarded to a port associated with the stream identified in the MAC frame).

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For claim 27, Saint Etienne discloses the entire claimed invention except for monitoring each buffer for fullness and means for transmitting a Pause control frame to the first MAC client, the Pause control frame indicating the fullness condition of each buffer.

Kauschke, from the same or similar field of endeavor, teaches monitoring each buffer for fullness and transmitting a Pause control frame from the second MAC client to the first MAC client, the Pause control frame indicating the fullness condition of each buffer (paragraph 50, lines 1-8).

Thus, it would have been obvious to one of ordinary skill in the art to combine the congestion control of Kauschke with the communication network of Saint Etienne at the time of the invention. The congestion control of Kauschke is implemented into the communication network of Saint Etienne by sending a Pause control to restrict the traffic flow into the buffers. The motivation to combine the congestion control of Kauschke with the communication of Saint Etienne is that it increases system throughput.

For claim 42, Saint Etienne discloses means for receiving MAC frames from a MAC client over the Ethernet link (col. 4, line 64-col. 5, line 11, where each client may transmit frames to a plurality of virtual links, such that the MAC client must receive information from multiple streams); each frame containing a PDU and an indication of the stream to which the PDU belongs column 1, lines 25-28 wherein the “useful load” is the PDUs) and an indication of the stream to which the PDU belongs (col. 2, lines 21-35, where the source subscriber equipment creates frames, with each frame containing a field that identifies the virtual link to which the frame belongs)

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A plurality of buffers, one buffer associated with the stream (col. 3, lines 44-52, where "queuing" indicates the use of buffers to reconstruct the data); means for decapsulating the PDUs (col. 3, lines 44-52, where "putting the data together again" requires the destination equipment to decapsulate each PDU, see also col. 1, lines 25-28); and storing each PDU in a buffer associated with the stream indicated in the MAC frames (col. 3, lines 44- 52, where the data is made "available to the receiving application," i.e. the PDUs are forwarded to a port associated with the stream identified in the MAC frame).

For claim 42, Saint Etienne discloses the entire claimed invention except for means for monitoring the fullness of each buffer and means for transmitting a Pause control frame to the MAC client, the Pause control frame indicating the fullness of each buffer.

Kauschke, from the same or similar field of endeavor, teaches monitoring each buffer for fullness and transmitting a Pause control frame from the second MAC client to the first MAC client, the Pause control frame indicating the fullness condition of each buffer (paragraph 50, lines 1-8).

Thus, it would have been obvious to one of ordinary skill in the art to combine the congestion control of Kauschke with the communication network of Saint Etienne at the time of the invention. The congestion control of Kauschke is implemented into the communication network of Saint Etienne by sending a Pause control to restrict the traffic flow into the buffers. The motivation to combine the congestion control of Kauschke with the communication of Saint Etienne is that it increases system throughput.

For claims 2 and 28, Kauschke discloses controlling the flow of signal streams by temporarily halting the transmission of PDUs belonging to streams associated with buffers which are indicated as congested by the Pause control frame (paragraph 25)

For claims 3 and 29, Saint Etienne discloses each MAC frame includes a prepended address field which identifies the stream with which the encapsulated PDU is associated (col. 2, lines 21-35, where the source subscriber equipment creates frames, with each frame containing a field that identifies the virtual link to which the frame belongs)

For claims 56-58, Kauschke discloses receiving the Pause control frame at the first MAC client (paragraph 25);

Processing the Pause control frame at the first MAC client such that PDUs from streams whose buffer(s) is full as indicated by the the Pause control frame are not transmitted as part of MAC frames communicated from the first MAC client to the second MAC client over the Ethernet link (paragraph 25)

7. Claims 6-8, 10-15, 17-19, 21-26, 32-34, 36-39, 40-41, 43-45, 47-49, and 50-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saint Etienne et al. (US 7,242,683 B2) in view of Kauschke et al. (US 2005/0013250 A1) as applied to claims 1, 16, 27, 42, 53 above, and further in view of Unitt et al. (US 2004/0028405 A1).

For claims 6-7, 17-18, 32-33, and 43-44, Saint Etienne discloses the entire claimed invention except for each buffer indicates the fullness condition of the

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associated buffer using a single bit identifier and each single bit identifies a Xon/Xoff condition.

For claims 6-7, 17-18, 32-33, and 43-44, Unitt discloses each buffer indicates the fullness condition of the associated buffer using a single bit identifier and each single bit identifies a Xon/Xoff condition (paragraphs 131-132).

Thus, it would have been obvious to one skilled in the art to use a single bit identifier as taught by Unitt in the modified system of Saint Etienne and Kauschke to indicate the fullness of the buffer. The motivation to combine the flow control method of Unitt with the modified system of Saint Etienne and Kauschke to reduce system congestion and increase throughput.

For claims 8, 19, 34 and 45, Saint Etienne and Kauschke and Unitt do not explicitly disclose the Pause control frame includes a two bit identifier for each buffer indicating the fullness condition of the associated buffer. However, Saint Etienne and Kauschke and Unitt disclose a single bit identifier to indicate fullness of the buffer and the single bit identifier identifies a Xon/Xoff condition. It is generally considered to be within the ordinary skill in the art to adjust, vary, select or optimize the numerical parameters or values of any system absent a showing of criticality in a particular recited value. Since Saint Etienne and Kauschke and Unitt disclose the use of an identification, it would have been obvious to one of ordinary skill in the art at the time of the invention to have the length of this identification be any size, including two bytes, absent a showing of criticality by Applicant.

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For claims 10-11, 21-22, 36-37 and 47-48, Unitt discloses the Pause control frame includes a Pause timer value, the Pause timer value is set to zero when the Pause control frame indicates that no buffer is experiencing congestion (paragraph 88 wherein the Pause control frame includes a timer value which may be set to zero if there is no congestion and traffic would not need to be halted for a certain period of time).

For claims 12, 23, 38 and 49, Kauschke discloses the Pause timer value is set to a pre-programmed Pause Time Value when the Pause control frame indicates that at least one buffer is experiencing congestion (paragraph 50, lines 1-4).

For claims 13, 24, 39 and 50, Unitt discloses setting a pause refresh timer each time a Pause control frame is transmitted and transmitting a Pause control frame at the expiration of the pause refresh timer if no Pause control frame was transmitted since the pause refresh timer was set (Fig 4, steps 45-46 and paragraph lines 20-25 where in a pause control frame is sent upon expiration on the refresh timer).

For claims 14-15, 25-26, 40-41 and 51-52, Unitt discloses the entire claimed invention except for setting a pause delay timer each time a Pause control frame is transmitted and transmitting a Pause control frame at the expiration of the pause delay timer if congestion conditions have changed since the last Pause control frame was transmitted, the pause delay timer is or shorter durations than the pause refresh timer (Fig 4, steps 47-48 wherein a delay timer shorter than the refresh timer is set and a pause control frame is sent upon expiration of the delay timer).

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8. Claims 4-5 and 30-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saint Etienne et al. (US 7,242,683 B2) in view of Kauschke et al. (US 2005/0013250 A1) as applied to claims 1 and 27 above, and further in view of Fite, Jr. et al. (US 6,252,888 B1).

For claims 4 and 30, Saint Etienne discloses the entire claimed invention except for the identification is mapped onto an IEEE 802.1Q VLAN tag within the MAC frame

For claims 5 and 31, Saint Etienne discloses the entire claimed invention except for the identification is an IEEE 802.1Q VLAN tag within the MAC frame which is mapped to a port

For claims 4-5, and 30-31, Saint Etienne and Kauschke disclose the entire claimed invention except for identification is mapped onto an IEEE 802.1Q VLAN (virtual local area network) tag within the MAC frame. Saint Etienne does disclose placing the identification of the virtual link in an Ethernet frame (col. 2, lines 32-35); however, Saint Etienne fails to disclose where this identification is placed in the frame. Fite teaches that IEEE 802.1Q is a standard in which an Ethernet frame contains a VLAN tag (Fig. 2a and col. 3, lines 47-53, see also col. 4, lines 11-20). Fite further discloses that a VLAN tag is included with each frame to identify and route the frame over a network (col. 3, lines 17-21).

Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to map the identification of Saint Etienne and Kauschke onto an IEEE 802.1Q VLAN tag within the MAC frame, as disclosed in Fite. The motivation to combine the modified system of Saint Etienne and Kauschke is because the IEEE

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802.1Q field is used in Ethernet frames to store information used to identify and route the frame, where the identification of Saint Etienne is similarly used to identify and route the frame.

9. Claims 9, 20, 35 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saint Etienne et al. (US 7,242,683 B2) in view of Kauschke et al. (US 2005/0013250 A1) as applied to claims 1, 16, 27, and 42 above, and further in view Chen (US 2003/0147347 A1).

For claims 9, 20, 35 and 46 Saint Etienne discloses each two bit identifier identifies Xon/Xoff/NoChange condition

Chen, from the same or similar field of endeavor, defines three states indicating the congestion level of the buffer associated with the streams: Xon (normal), Xoff (congested) and AllXoff (seriously congested, i.e. no change from previous state of congestion).

Thus, it would have been obvious to someone of ordinary skill in the art to combine the flow control method of Chen with the modified system of Saint Etienne and Kauschke at the time of the invention. The flow control of Chen is implemented into the modified system of Saint Etienne and Kauschke by identifying the congestion states using 2-bits of the header field. The motivation to combine the flow control of Chen with the modified system of Saint Etienne and Kauschke is to increase network throughput by lowering congestion occurrence.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to FARAH FAROUL whose telephone number is (571)270-1421. The examiner can normally be reached on Monday - Friday 7:30 AM - 5 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi H. Pham can be reached on 571-272-3179. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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4/26/09

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